

EXHIBIT NO.

7

DATE:

1/14/13

I am Pat McCoy, a taxpayer from White Sulphur Springs, and I am here today to testify regarding HB 79.

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SB 79

In July of 2011 I contacted Senator Dave Lewis to ask for his help in correcting a flaw in the Montana Non-Profit Corporation Act. I had confirmed, with Kelly Hubbard at the Montana Secretary of state office, that there was wording in MCA 35-2-907 allowing oversight of non-profit corporations with members, by allowing the members access to the books and records of said corporations, there is no similar statutory language regarding corporations without members.

Corporations are chartered by the state, and gain several benefits, including perpetual life; limited liability to corporate members and officers; and non-profit corporations are exempt from paying sales taxes, state income tax, and federal income tax. They also may obtain "charitable status" under Section 501(c) 3 of the US tax code, which allows them to accept donations on a tax free basis to the donor. They also may ask local citizens to tax themselves for the benefit of the corporation.

For profit corporations (schedule C, sub-chapter S, and Professional Corporations) are controlled by their stockholder-members, who provide the necessary oversight for legal operation of the corporations. Non-Profit corporations are limited to three types in Montana: Religious, Mutual Benefit, and Public Benefit corporations. Montana Code 35-2-907 allows oversight of these corporations, if they have members, by allowing members access to the books, records, and meeting minutes, however no such oversight of corporations without members is to be found in the statute. When granting powers, it is the responsibility of the state to maintain a system to be certain those powers are not being abused. In the case of non-profit corporations without members the legislature has abrogated it's duty to protect the public.

Public oversight could come in many ways, such as a legislative committee, or authority granted to a State agency, or a requirement for a majority of the board pf the non-profit corporations to be either elected by the public, or appointed by a board of elected public officers (such as County Commissioners). Another way was my original proposal to Senator Lewis to add a clause to the current statute saying "...the public for whose benefit the public benefit corporation has been established shall have the same powers and rights as members in a non-profit corporation with members." This has several benefits, in that no state money would be needed for oversight through the legislature or a State agency, no additional elections need to be added to future ballots, and the public boards would have one less item to handle, while still establishing oversight of a public charitable corporation. A final benefit is that the non-profit corporation itself would determine who had access to their books and records by carefully choosing the definition of "public" in their IRS filings. As an example, only members (or their legal guardians) of the Lander Junior Rifle club Foundation (a 501 (c) 3 foundation I helped established several years ago) would have access to the books and records of the corporation. Other members of the public have no standing, and no access to the books and records other than the annual IRS form 990.

Public oversight is not served by self-sustaining boards of directors appointing their own members and successors.

Senator Lewis agreed to sponsor a bill to modify MCA 35-2-907 by adding the aforementioned clause giving rights to "the public for whose benefit the non-profit corporation was established." A member of LSO called me, and we visited about the language until she understood the idea, and she agreed to put the wording into the correct format to add to the statute. The results have since been alarming, as the bill has been reduced to the present wording, due to pressure from certain non-profit public benefit corporations. It is my understanding that even this ghost of a bill has caused leadership to request Senator Lewis to remove it.

The current bill to require posting of the IRS form 990 is redundant, in that federal law already requires such posting, and useless from the standpoint of oversight, as the IRS form 990 is simply an annual aggregation finances of a retrospective basis. Oversight requires current access to current and prospective finances, on a current basis giving information about individual areas of operation rather than an agglomeration of all past costs and expenses. As an example, the 990 gives no assistance in determining if that last increase in long term care room rates at Mountainview Medical Center was needed, as it does not show the costs prior to the change to establish that the earlier rate was adequate or inadequate, nor to show that the approximate \$20 increase in daily rate from to the newly established maximum allowable Medicare reimbursable charge was fully justified. This information is needed to protect the financial assets of the community, as well as help the non-profit corporations from inadvertently straying into an area, which could conceivably be considered fraud, by charging the full allowed amount even though they cannot show their costs justify the full increase. Overcharging, and the loss of disposable income by members of the community would pale in comparison to loss of the facility due to closure over federal fraud charges. Oversight protects the local citizens, the corporation, and the other citizens of Montana and the US whose taxes pay for Medicare/Medicaid.

MHA may complain the "their members are different" and cannot have public oversight from non-medical persons, however the oversight under discussion is financial rather than medical, and the administrators of the facilities are not medically trained. They may complain that they cannot get board members, but what they mean is they cannot get board members they can control, or board members willing to risk their entire assets when the boards act in contravention of laws, thereby losing both their corporate veil of liability and their E&O insurance coverage. The MHA mission statement says they "...advocate for the interests of members in their efforts to improve health status of the communities they serve." How does fighting oversight by the members of the communities they serve promote their mission? When darkness rather than daylight, and hidden meetings and agendas rather than public meetings and discussion are the rule two questions come to mind. What is the organization ashamed of? What are they trying to hide?

The current hue and cry by MHA and their members is a reminder of Mark Twain's statement that history did not repeat itself, but it did rhyme. The argument a hundred years ago was that "Big Mining", Big Railroads", then "Big Newspapers" couldn't be understood by "outsiders", and caused Montana to have reputation of having "the best legislature that could be bought". Today "Big Medicine" has replaced the mines, and railroads, but judging by the leadership pressure to gut this bill for public oversight of public charitable organizations, we have come full circle with the best legislature that can be bought.

I ask you to prove the latter is incorrect by passing a bill offering true oversight of non-profit corporations without members, just as you have done for those with members.